

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.:

LUCENDA PHILBERT,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

_____/

COMPLAINT

Plaintiff, LUCENDA PHILBERT, by and through the undersigned counsel, hereby sues Defendant, UNITED STATES OF AMERICA, and states as follows:

JURISDICTION & VENUE

1. This is a tort claim arising under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), against Defendant, for the negligence of the United States Postal Service, an agency of the federal government pursuant to 39 U.S.C. § 201; therefore, this Court has subject matter and personal jurisdiction.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1402(b) because the facts underlying this Complaint occurred in Palm Beach County, Florida within the Southern District of Florida.

3. Pursuant to 28 U.S.C. § 2675(a) the claim set forth herein was presented to the United States Postal Service on or about April 11, 2023. (Attached as *Exhibit "A"* is a copy of the standard form 95 served on the United States Postal Service dated April 11, 2023, along with the certified mail return receipt attached as *Exhibit "B"*).

4. The United States Postal Service has not made a final disposition of the Administrative Claim although the six-month period from the date of filing the claim has expired. Plaintiff deems this a final denial pursuant to 28 U.S.C. § 2675(a), which entitles him to file this lawsuit.

THE PARTIES

5. Plaintiff, LUCENDA PHILBERT, is a citizen of the United States of America and is otherwise *sui juris*.

6. The United States Postal Service is an agency of the United States of America and it is responsible for the acts of the United States Postal Service and its employees acting within the course and scope of their employment.

COUNT I - NEGLIGENCE AGAINST DEFENDANT **UNITED STATES OF AMERICA**

Plaintiff, LUCENDA PHILBERT, hereby adopts and re-alleges the allegations contained in paragraphs one (1) through six (6) above and further alleges:

7. On November 10, 2021, Marcus Austin Butler, an employee of the United States Postal Service, was operating a United States Postal Service vehicle bearing vehicle identification number: 1FMU69K210A10320.

8. At all times material hereto, Marcus Austin Butler was acting within the course and scope of their employment with the United States Postal Service.

9. At all times material hereto, Marcus Austin Butler was operating said vehicle with the permission and consent of the United States Postal Service.

10. At all times material hereto, Marcus Austin Butler was operating said vehicle on Lawrence Road at or near Hypolouxo Road in Boynton Beach, Palm Beach County, Florida.

11. At all times material hereto, Marcus Austin Butler had a duty to exercise reasonable care in the operation of said vehicle.

12. At all times material hereto, Marcus Austin Butler breached this duty by negligently operating the above-referenced vehicle causing it to collide with a vehicle that Plaintiff, LUCENDA PHILBERT, was a passenger in.

13. As a direct and proximate result of the negligence of Defendant, UNITED STATES OF AMERICA, Plaintiff, LUCENDA PHILBERT, sustained bodily injuries resulting in pain and suffering, disability, disfigurement, mental anguish, loss of the capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, loss of the ability to earn money, and aggravation of a previously existing condition if any. These losses are either permanent or continuing in nature and the Plaintiff, LUCENDA PHILBERT, will suffer these losses in the future.

WHEREFORE, Plaintiff, LUCENDA PHILBERT, demands judgment against Defendant, UNITED STATES OF AMERICA, for damages in a sum equal to that demanded in his administrative claims, plus costs, interest and such other and further relief as the Court deems just and proper and demands trial by jury and all issues so triable.

DATED this 20TH day of FEBRUARY 2024.

GOLDMAN & DASZKAL, P.A.

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BY:  _____

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